

House Conservation and Environment Amendment #1

AMENDMENT NO. \_\_\_\_\_

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Signature of Sponsor

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

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by deleting all language following the enacting clause and substituting instead the following:

**SECTION 1. TITLE** - This Act shall be known and may be cited as the "Tennessee Drycleaner's Environmental Response Act".

**SECTION 2. DEFINITIONS** - As used in this Act, unless the context otherwise requires:

(1) "Abandoned drycleaning facility" means any real property premises or individual leasehold space on which a drycleaning facility formerly operated;

(2) "Board" means the drycleaner environmental response board created under Section 4 of this Act;

(3) "Commissioner" means the Commissioner of the Department of Environment and Conservation, or his or her designee.

(4) "Department" means the Department of Environment and Conservation.

(5) "Drycleaning facility" means any commercial facility located in this state which is engaged in on-site drycleaning operations, other than: (A) a coin-operated drycleaning operation, (B) a facility located on a United States military base or owned by the United States, or any department or agency thereof, (C) a commercial uniform service and/or linen supply facility, or (D) a facility owned by the State or any agency or department thereof.

(6) "Drycleaning operations" means cleaning of apparel and household fabrics, using one or more drycleaning solvents, including, but not limited to those businesses described in Standard Industrial Classification (SIC) Code No. 7216;

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(7) "Drycleaning solvent" means any non-hydrocarbon chlorine or hydrocarbon-based formulation or product that is used as a primary cleaning agent in drycleaning operations;

(8) "Drycleaner environmental response fund" refers to the fund established under Section 3 of this Act;

(9) "Full-time employee" means the total number of hours worked at a drycleaning facility by all full-time and part-time employees excluding the owner/manager and dividing that number by forty (40). This hereafter shall be known as full-time equivalence (FTE).

(10) "Impacted Third Party" means a lessor of real property on which a drycleaning facility or an in-state wholesale distribution facility is located, a property owner whose real property is adversely environmentally impacted by a release from a drycleaning facility or in-state wholesale distribution facility, or their predecessors, successors or assigns, mortgagees, predecessors-in-title, and successors-in-title.

(11) "In-State Wholesale Distributor" means a person or company whose primary business is selling drycleaning solvents and supplies to drycleaning facilities and who operates an in-state wholesale distribution facility;

(12) "In-State Wholesale Distribution Facility" means a place of business located in Tennessee of an in-state wholesale distributor or any real property

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premises or individual leasehold space occupied by an in-state wholesale distribution facility after the date of this Act; and

(13) "Release" means any spilling, pouring, overfilling, leaking, leaching, emitting, discharging, or escaping of drycleaning solvents from a drycleaning facility or an in-state wholesale distribution facility or its associated piping which impacts groundwater, surface water, surface or subsurface soils.

**SECTION 3. RESPONSE FUND** - (a) There is established the "drycleaner environmental response fund" to provide a source of funds for the implementation of this Act.

(b) The expenses of administering the fund, including staff to implement the provisions of this Act, shall be paid from the money in the fund.

(c) The State treasurer shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds are invested. Interest that accrues from these investments shall be deposited in the fund.

(d) The sources of money for the fund are as follows:

(1) Registration fees and drycleaning solvent surcharges paid under Section 6 of this Act;

(2) Any appropriations made by the general assembly;

(3) Penalties collected pursuant to this Act;

(4) Gifts, grants, and donations intended for deposit in the fund; and

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(5) Any federal funds made available under similar federal legislation, or any other federal program.

(e) Any unencumbered monies and any unexpended balance of the fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with the provisions of this Act.

(f) All claims against the fund shall be expressly and exclusively obligations of the fund only and not of the state, and any amounts required to be paid under this part are subject to the availability of sufficient monies in the fund. The full faith and credit of the state shall not in any way be pledged or considered to be available to guarantee payment from such fund.

(g) Notwithstanding any other provisions of law to the contrary, the drycleaner environmental response fund shall not be considered an insurance company or insurer under the laws of this state and shall not be a member of nor be entitled to claim against the Tennessee Insurance Guaranty Association created under title 56, chapter 12.

**SECTION 4. PROGRAM ADMINISTRATION** - (a) The drycleaner environmental response program is hereby created within the Department of Environment and Conservation, in the Division of Superfund. The drycleaner environmental response board is hereby created. Such board shall be administratively attached to the Department of Environment and Conservation.

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(b) The board shall be composed of the Commissioner of Environment and Conservation, or his or her designee; and one (1) representative of each of the following, appointed by the governor:

(1) Drycleaning operations that employ no more than ten (10) full-time equivalent employees;

(2) Drycleaning operations that employ eleven (11) or more full-time equivalent employees;

(3) Wholesale distributors of drycleaning solvents;

(4) Environmental interests;

(5) Environmental engineering or scientific community; and

(6) An Impacted Third Party representative who is not an operator of a drycleaning facility.

(c) The initial appointments by the governor shall be staggered as follows:

(1) Three (3) members shall be appointed for a term of three (3) years;

(2) One (1) member shall be appointed for a term of four (4) years;

(3) One (1) member shall be appointed for a term of five (5) years; and

(4) One (1) member shall be appointed for a term of six (6) years.

Thereafter, all members shall serve three (3) year terms.

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(d) Each member of the board who is not a state employee is entitled to receive travel expenses in accordance with the state comprehensive travel regulations promulgated by the Department of Finance and Administration and approved by the Attorney General.

(e) If an appointed member of the board is not able to serve the member's full term, the governor shall appoint an individual to serve for the remainder of the unexpired term.

(f) The board shall, at its first meeting of each year, elect from among its members a chairperson and other officers necessary to transact business.

(g) The board must have a quorum to transact business. Four (4) members shall constitute a quorum. The board shall meet upon the request of the chairperson or the written request of three (3) of the board members. A meeting must be held within fourteen (14) days after a request is made.

**SECTION 5. DUTIES AND RESPONSIBILITIES OF BOARD** (a) The board shall have the following duties and responsibilities:

(1) Develop and approve investigation and remediation strategies, including but not limited to presumptive remedial responses, and establish a mechanism for approving contractors to perform investigation and remediation actions under this Act; establish a schedule of acceptable registration fees and costs for services rendered by approved contractors under the Act; and

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(2) Oversee expenditures required to provide administrative support and maximize the funds available for cleanup and minimize the administrative expenditures of the board and department; and

(3) Review and accept or deny the petition for entry into the program based on the standards set out in (5) below, and prioritize petitions described in this Act according to guidelines established by the board. In establishing guidelines for site prioritization, the board shall consider the degree of risk to human health and the environment and other factors as the board may deem appropriate; and

(4) Develop rules which establish a process for the owner or operator of a drycleaning facility or in-state wholesale distribution facility, the current or prior owner or operator of an abandoned drycleaning facility, or impacted third party to petition the board: (a) for entry into the program, (b) for the expenditure of monies from the fund for reimbursement of approved investigative or remedial response costs; (c) for scheduling investigatory and remedial measures; and (d) for an appeal of decisions of the board's designee. Such petition processes are to place a minimum cost burden on the parties.

(5) Once a drycleaning facility, in-state wholesale distribution facility, abandoned drycleaning facility, or impacted third party has petitioned the board and has complied with all the requirements for entry into the program as established by this Act, including the payment of necessary registration fees and, if applicable, surcharges on drycleaning solvents, then the board shall accept the petition, inform the party of its decision

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to allow the site into the program established by this Act, and inform the party of the priority ranking of the site. The board may reject any petition and deny coverage under the Act if it determines that the drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility has been in willful noncompliance with the provisions of the Act or the rules enacted hereunder.

(6) The board shall also develop rules which establish a process for the board to withdraw the grant of a petition after notice to the petitioning party and all impacted third parties and a reasonable opportunity to cure. The board may withdraw any favorable determination concerning any petition previously granted if it determines that the petitioner is in willful noncompliance with the provisions of this Act or the rules enacted hereunder. A determination of ineligibility against the petitioning party, due to conduct that occurred after the granting of the initial petition by the board, shall not otherwise affect another eligible party's ability to obtain reimbursement from the fund.

(7) Authorize payments from the fund established by this Act to a petitioner or its designee to reimburse the cost of an investigative or remedial response undertaken and approved pursuant to its rules. Sites which are high priority sites, as determined during the program entry process, will be reviewed by the board and it will authorize the reimbursement of funds necessary for the cleanup of such sites with money available from the fund. Such authorization for payment from the fund to a petitioner or its designee shall be given prior to the expenditure of any fund monies.



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(8) Develop rules that institute a process for certification of the completion of all necessary investigation and remedial work or further that no investigation and remediation is necessary with respect to a site.

(9) Develop and promulgate regulations or guidelines establishing ongoing best management practices for the drycleaner industry in the state with respect to the handling of drycleaning solvent.

(b) The board may delegate any of its rights, duties and responsibilities under this Act to the Commissioner, except the duty to conduct contested case hearings in accordance with Tennessee Code Annotated, Title 4, Chapter 5, and the duty to promulgate the rules.

(c) The board shall promulgate all rules and regulations necessary to implement this Act, including, but not limited to, rules on the subjects specified above, and shall conduct all contested case proceedings in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5. Judicial review of final orders of the board in contested case proceedings shall be in the Chancery Court of Davidson County pursuant to the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

**SECTION 6. PAYMENTS TO THE FUND** - (a) Each year, beginning the first full calendar year following enactment of this section, the owner or operator of a drycleaning facility that is currently conducting, or intends to conduct for all or part of the year,

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drycleaning operations and each in-state wholesale distribution facility, shall register with the Department on forms provided by the Department.

(b) Current or prior owners or operators of abandoned drycleaning facilities may register the site as set out in Section 6(a). A current or prior owner or operator of an abandoned drycleaning facility who fails to register a site with the Department as described in Section 6(a) shall be permitted to register said site provided that the current or prior owner or operator pays the annual registration fees that would have been imposed under this Act on the site if the abandoned drycleaning facility had been registered at the first possible date established by this Act. In addition, said registrant shall pay interest on the back registration fees, plus a fifty dollar (\$50) per month late fee for each month since the first month that the site could have registered under this Act.

(c) The owner or operator of a drycleaning facility or current or prior owner or operator of an abandoned drycleaning facility registered under this section shall pay to the Department an annual registration fee as follows:

(1) Each drycleaning facility or abandoned drycleaning facility shall pay a yearly per site registration fee of:

- |   |         |
|---|---------|
| (A) 0-4 full-time equivalent employees        | \$500   |
| (B) 5-10 full-time equivalent employees       | \$1,000 |
| (C) 11 or more full-time equivalent employees | \$1,500 |
| (D) Abandoned drycleaning facility            | \$1,500 |

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(d) After May 15, 1996, it shall be unlawful to sell or transfer drycleaning solvent to any person owning or operating a drycleaning facility unless the owner or operator of the drycleaning facility has conspicuously posted a copy of a valid certificate evidencing registration of the drycleaning facility pursuant to this Act at the facility. Any person who violates or fails to comply with any provision of this subsection shall be subject to a civil penalty of up to ten thousand dollars (\$10,000) per violation. The Commissioner has the authority to assess civil penalties under this subsection. The recipient of any civil penalty under this subsection shall have the right to appeal said assessment to the board. The appeal of any assessment under this subsection shall be filed with the board within thirty (30) days of the party's receipt of the assessment.

(e) An in-state wholesale distributor shall pay to the Department an annual registration fee of five thousand five hundred dollars (\$5,500.00) per in-state wholesale distribution facility.

(f) At least thirty (30) days before payment of a registration fee is due, the Department shall attempt to notify and submit a registration fee payment form to each drycleaning facility, each in-state wholesale distribution facility and each current or prior owner or operator of an abandoned drycleaning facility registered under this section. The registration fee payment form provided by the Department must accompany the registration fee payment.

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(g) In addition to the registration fee required by subsection (c)(1), there is hereby established a drycleaning solvent surcharge of:

(1) ten dollars (\$10.00) for each gallon of non-hydrocarbon-based drycleaning solvent purchased by a drycleaning facility; and

(2) one dollar (\$1.00) for each gallon of hydrocarbon-based drycleaning solvent purchased by a drycleaning facility.

(h) The solvent surcharge for drycleaning solvent sold by a distributor whose principal place of business is in Tennessee shall be collected and forwarded to the Department by the seller of the drycleaning solvent. If a drycleaning facility purchases solvent from a distributor whose principal place of business is located outside the State of Tennessee, the purchaser of the drycleaning solvent or the owner or operator of the drycleaning facility using the solvent shall be responsible to the Department for paying the solvent surcharge.

(i) The surcharges set forth above shall be paid on a calendar year basis and shall be paid to the Department for the previous calendar year at the same time as the current annual registration fee is due.

(j) The Department shall provide each person who pays a registration fee or solvent surcharge under this Act with a receipt. The receipt or the copy of the receipts shall be produced for inspection at the request of any authorized representative of the Department.

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(k) Prior to the approval of an expenditure of any funds under this Act with respect to reimbursement for investigation or remediation at a particular site that has been accepted into the program established by this Act, each drycleaning facility, abandoned drycleaning facility, in-state wholesale distribution facility, or impacted third party, which files a petition accepted by the board requesting such expenditure, will be required to accept responsibility for incurring response costs in the following amounts (deductibles):

- |   |          |
|---|----------|
| 1) 0-4 full-time equivalent employees at the site       | \$5,000  |
| 2) 5-10 full-time equivalent employees at the site      | \$10,000 |
| 3) 11 or more full-time equivalent employee at the site | \$15,000 |
| 4) In-state wholesale distribution facility             | \$25,000 |
| 5) Abandoned drycleaning facilities                     | \$15,000 |

An impacted third party's deductible shall be equal to the deductible which would be applicable if the impacted third party owned the drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility which is the source of the release.

(l) Registration fees and surcharges paid under this section shall be collected by the Department and deposited in the drycleaner environmental response fund created under this Act.

(m) If money in the fund exceeds ten million dollars (\$10,000,000) during any one (1) year, the board is directed to notify the Department. Upon notification by the board

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under this subsection, the Department shall waive the payment of the solvent surcharges and collect only the registration fees for a period of one (1) year.

(n) Not earlier than two (2) years from the date of enactment, the registration fees and surcharges and deductibles prescribed by this section may be adjusted by the board, after notice and opportunity for public comment, in a manner necessary and appropriate to ensure viability of the fund and in furtherance of the purposes of this Act; provided that any fees or deductibles applicable to abandoned drycleaning facilities shall never be in excess of the fees and deductibles applicable to the largest drycleaning facility, and there shall be no surcharges on abandoned drycleaning facilities.

**SECTION 7. REIMBURSEMENT FROM FUND** - (a) An owner or operator of a drycleaning facility, or in-state wholesale distribution facility, the current or prior owner or operator of an abandoned drycleaning facility, or an impacted third party may seek reimbursement from the fund for response costs above the applicable deductible set forth in Section 6(k) incurred in connection with a release from a drycleaning facility, in-state wholesale distribution facility or abandoned drycleaning facility in accordance with regulations established by the board.

(b) The board may not authorize the expenditure of funds from the fund in an amount in excess of two hundred thousand dollars (\$200,000) per year for releases from any individual drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility, except in the sole discretion of the board upon request by any party

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including the Department. This provision is not subject to the board's general power to delegate its duties as contained in paragraph 5(b).

(c) The board shall not authorize a distribution of monies from the fund that would result in a diminution of the fund below a balance of one hundred thousand dollars (\$100,000) unless an emergency exists at a drycleaning facility, abandoned drycleaning facility, or in-state wholesale distribution facility that constitutes an imminent and substantial threat to human health or the environment. In the event of an emergency as described herein, the board shall approve the reimbursement of reasonable response costs to remove the imminent and substantial threat to human health or the environment. This provision is not subject to the board's general power to delegate its duties as contained in paragraph 5(b).

(d) The board shall not authorize distribution of fund monies to: (1) sites that are contaminated by solvents normally used in drycleaning operations where the contamination at such sites did not result from the operation of a drycleaning facility, abandoned drycleaning facility, or an in-state wholesale distribution facility; (2) sites that are not drycleaning facilities, in-state wholesale distribution facilities, or abandoned drycleaning facilities, that are contaminated by a release that results from drycleaning solvents being transported to or from a drycleaning facility or in-state distribution facility, or (3) any property contaminated by a release from a drycleaning facility, abandoned drycleaning facility, or in-state whole distribution facility, that has been identified by the United States Environmental

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Protection Agency as a federal superfund site pursuant to 40 CFR Part 300 et seq., except that the board may authorize distribution of the required state match up to \$200,000 per year per site, or (4) any drycleaning facility which has obtained a permit pursuant to the Resource Conservation and Recovery Act as amended. The ability to authorize distribution of the required state match as established by Subsection (d)(3) is not subject to the board's general power to delegate its duties as contained in paragraph 5(b).

**SECTION 8. REFUSAL TO PAY REGISTRATION FEES OR SURCHARGES - (a)**

Upon failure or refusal of an owner or operator of a drycleaning facility, an in-state wholesale distribution facility, or the current or prior owner or operator of an abandoned drycleaning facility, subject to payment by regulation, to pay a registration fee or solvent surcharge, lawfully levied within a reasonable time allowed by the Commissioner, the Commissioner may proceed in the Chancery Court of Davidson County to obtain judgment and seek execution of such judgment.

(b) Any person who fails or refuses to pay a lawfully levied registration fee or any part of that registration fee by its due date shall be assessed a penalty of fifty dollars (\$50) for each day that passes after the registration fee becomes due and before the registration fee is paid. Nothing in this section shall be construed as requiring the issuance of a Commissioner's Order for the payment of a registration fee or a late payment penalty.



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**SECTION 9. ADMINISTRATIVE COSTS -** (a) Upon approval of the board, the fund shall be available to the board and the Commissioner for reasonable administrative expenditures associated with administering the fund.

**SECTION 10. RULEMAKING -** (a) Within twenty (20) months from the date this Act takes effect, the board shall promulgate, after public notice and an opportunity for comment, regulations to implement its duties and responsibilities as set forth in section 5 of this Act, including but not limited to, standards for evaluating releases of drycleaning solvent at or from affected drycleaning facilities, in-state wholesale distribution facilities, or abandoned drycleaning facilities and for determining what, if any, response action is necessary for any such release and standardized methods and techniques for responding to such releases and appropriate presumptive remedial responses. Such standards, methods and techniques shall, to the maximum extent practicable, be applicable to all drycleaning facilities, in-state wholesale distribution facilities and abandoned drycleaning facilities in the state and in any event shall be cost-effective, reasonable, and technically feasible.

**SECTION 11. PREEMPTION -** (a) Notwithstanding any other provision of law, no owner/operator of a drycleaning facility or in-state wholesale distribution facility or current or prior owner or operator of an abandoned drycleaning facility shall be liable for any release under any other law, including any common law claim, except to the extent of the deductible set forth in section 6(k) of this Act, or for third-party claims if such facility or distributor: (1)

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has paid all the registration fees and solvent surcharges required under this Act, (2) materially complies with all rules and regulations required in this Act, and (3) has had its petition accepted by the board for participation in the fund and the party is in material compliance with the board's requirements for investigatory or remedial measures. This section shall not preclude claims based solely upon personal injuries associated with a claimant's exposure to drycleaning solvent.

(b) Notwithstanding any other provision of law, no impacted third party shall be liable for any release under any other law, including any common law claim, or other third party claims, if the drycleaning facility, abandoned drycleaning facility or the in-state wholesale distribution facility which is the source of the release to the impacted third party's real property is eligible for participation in the fund for this site, and the impacted third party or the current or prior owner or operator of the drycleaning facility, abandoned drycleaning facility or in-state wholesale distribution facility which is the source of the release has petitioned the board and had its petition accepted by the board for participation in the fund and the impacted third party is in material compliance with any applicable board requirements for investigatory or remedial measures. This section shall not preclude claims based solely upon personal injuries associated with a claimant's exposure to drycleaning solvent.

(c) This section shall not apply to any claim filed in any court of competent jurisdiction before the date of enactment of this Act.

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**SECTION 12. SEVERABILITY** - If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

**SECTION 13. TECHNICAL AMENDMENTS** - Tennessee Code Annotated, Section 4-29-218, is amended by adding a new item thereto, as follows:

( ) "Drycleaner environmental response board";

**SECTION 14. EFFECTIVE DATE** - This Act shall take effect upon becoming a law, the public welfare requiring it.